

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

HERBERT G. GERDAU,

Plaintiff,

v.

**Civil Action 2:21-cv-4152
Judge Edmund A. Sargus, Jr.
Magistrate Judge Chelsey M. Vascura**

CAMBRIDGE CITY POLICE, *et al.*,

Defendants.

ORDER

This matter is before the Court on Plaintiff's Objection to the undersigned's August 16, 2021 Report & Recommendation. (ECF No. 4.) The undersigned previously recommended dismissal of Plaintiff's claims pursuant to 28 U.S.C. §§ 1915(e) and 1915A(b) because his constitutional claims under 42 U.S.C. § 1983 for excessive force that allegedly occurred on December 16, 2017 were time barred. (R. & R., ECF No. 3.) In his Objection, Plaintiff states he made a clerical error in his Complaint, and that the events in question actually occurred on December 16, 2019. (ECF No. 4.)

The undersigned construes Plaintiff's Objection as a motion for leave to amend his Complaint, which is **GRANTED**. Plaintiff is further advised that the Court is not required to accept as true allegations pleaded as legal conclusions. For example, Plaintiff's original Complaint alleges that "Officer Eubanks, James, and Castro intentionally and/or recklessly used excessive force which resulted in bodily harm to Plaintiff, and in a clear constitutional violation," but fails to explain the facts and circumstances leading up to the use of force, such that the Court

cannot determine whether the force used was excessive. Accordingly, Plaintiff's forthcoming Amended Complaint should include additional, detailed allegations upon which the Court can rely to assess whether he has plausibly alleged a claim for excessive force.

For the reasons above, the August 16, 2021 Report and Recommendation is **VACATED**. Plaintiff shall have until **OCTOBER 1, 2021**, to file an Amended Complaint.

IT IS SO ORDERED.

/s/ Chelsey M. Vascura
CHELSEY M. VASCURA
UNITED STATES MAGISTRATE JUDGE